

(S)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 1540/1990

Date of decision:22.01.92.

Shri Rameshwer Dutt Sharma

...Applicant

Vs.

Lt. Governor, Delhi & Another

...Respondents

For the Applicant

...Shri G.K. Srivastava,
Counsel

For the Respondents

...Mrs. Avnish Ahlawat,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to
see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant ~~who~~ has worked as a Teacher (T.G.T.) in
the schools run by the Delhi Administration for more than
25 years and at the time of filing the present application,
he was aged 53 years. As a case against him in respect of a
criminal offence was under investigation, he was placed under
suspension on 9.9.1983. The Court of Sessions Judge, Sonepat,
Haryana, convicted him under Section 302 IPC read with
Section 34 IPC by judgment dated 22.8.1984 against which he
preferred an appeal in the High Court of Punjab & Haryana.

The High Court upheld the conviction. The Special Leave Petition filed by him was dismissed on 31.3.1986. The punishment imposed on him is life term, two years R.I.

and six months R.I. ~~as when the case was heard~~ He was ~~presently~~ on parole ~~and he had~~ to report at the jail on 7.1.1992.

2. This is an unfortunate case. Without awaiting the outcome of the appeal filed by the applicant in the High Court and the Supreme Court, the respondents dismissed ~~him from service~~ ^{on 2.3.1985} ~~in exercise of the powers conferred by~~ Rule 19(1) of the CCS(CCA) Rules, 1965. He has not been given pension, gratuity and other retirement benefits. He is claiming leave encashment for 19 days earned leave before his dismissal, subsistence allowance for the period from 2.3.1985 to 31.8.1985, gratuity and interest on the outstanding dues towards G.P.F. and other claims mentioned above at the rate of 18% per annum from the date of dismissal, all totalling to Rs.58,957/-.. The respondents have rejected these claims on the ground that he is a dismissed employee.

3. We have carefully gone through the records of the case and have heard the learned counsel of both parties. The law in a case of this kind is well settled after the decisions of the Supreme Court in Union of India and Another Vs. Tulsiram Patel, 1985(2) SCALE 133 and

Satyavir Singh and Others Vs. Union of India and Others, 1985(2) SCALE 488. Rule 19(1) of the CCS(CGA) Rules, 1965 corresponds to Article 311(2) (a) of the Constitution according to which no enquiry need be held where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Interpreting this provision, the Supreme Court has held in Tulsiram Patel's case and Satyavir Singh's case that the disciplinary authority must consider whether the conduct of the Government servant which has led to his conviction was such as warrants the imposition of a penalty and, if so, what the penalty should be. The disciplinary authority must bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the Court's power of judicial review subject to the Court permitting it. Where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of proportion to the offence committed or not warranted by the facts and circumstances of the case or the

requirements of that particular Government service, the Court will strike down the impugned order.

4. After the Supreme Court delivered its judgments in Tulsiram Patel's case and Satyavir Singh's case, the Govt. of India took a conscious decision to amend Rule 19 of the CCS(CCA) Rules, 1965 and added a Proviso thereunder w.e.f. 28.3.1987 that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in cases of conviction on a criminal charge.

5. In the instant case, the respondents gave such an opportunity to the applicant by their Memorandum dated 16.1.1985. In his reply/representation dated 7.2.1985, the applicant, inter alia, prayed them to take pity on him and on his family members who were depending on his salary. Thereafter, the respondents passed a routine order on 2.3.1985 in a mechanical fashion and without application of mind to the effect that "it is considered that the conduct of said Shri R.D. Sharma which has led to his life term conviction is such as to render his further retention in public service undesirable". In our opinion, there cannot be a better example of a bald and non-speaking order than the one passed by them on 2.3.1985. In all fairness, the respondents should have mentioned what were the facts and circumstances of the case taken into account by them before

Ar

(2)

provisionally coming to the conclusion that "the applicant was not a fit person to be retained in service and that the gravity of the charge is such as to warrant a major penalty". It is quite apparent that in a case where the criminal court has convicted a person to life imprisonment, it is impossible to "retain him in service" even if the executive authorities were to come to the conclusion that he is a fit person to be retained in service. The mechanical nature of the order passed by the respondents thus becomes apparent. Apparently they were unaware of the fact that even in such a case, they could impose on him the penalty of compulsory retirement which is also one of the major penalties in which event, there would not have been a clash with the Court's verdict of giving life term imprisonment to him.

6. We are also of the view that the grievances of the applicant in regard to delay in payment of his G.P.F. amounts, ² non-payment of ² leave encashment for 19 days prior to his dismissal and delayed payment of subsistence allowance have not been considered by the respondents, taking into account the realities of the situation. The offence with which the applicant had been charged was not in any way connected with his official conduct. The applicant had been lodged in jail since the date of his conviction by the Court of Sessions Judge. In such a case, it

16

was expected of the Government, which should function as a model employer, to waive all formalities under the rules and give the amounts standing to his credit in the G.P.F. Account by a crossed cheque through the Superintendent of the jail concerned. This was not done in the instant case.

7. Similarly, the subsistence allowance to which the applicant was entitled to was not paid in time on the ground that he "did not turn up to receive the payment himself or through a duly authorised officer." The amounts were drawn by the D.D.O. but were redeposited with the State Bank of India as undisbursed amount. In our opinion, in a case of this kind, the respondents should have made available to the applicant cheques for the amounts due to him through the Superintendent of the jail concerned, ^{after} every month, without insisting on any formalities and waiving the normal rules.

8. The applicant was entitled to leave encashment for 19 days earned leave which had accrued to him before the date of his dismissal from service by the order dated 2.3.1985. This was denied to him on the ground that under Rule 24 of the CCS(Pension) Rules, 1972, his past service is forfeited. According to the said Rule, dismissal or removal of a Govt. servant from a service or post entails forfeiture of his past service. In our opinion, there is nothing in Rule 24 to indicate that the leave accrued to a Government servant would be forfeited if he is dismissed or removed from service on

11

a subsequent date. The true meaning of Rule 24 is that in such a case, the past service will not be counted as qualifying service for the purpose of pension and other retirement benefits.

9. The claim of the applicant for subsistence allowance for the period from 2.3.1985 to 31.3.1986 is not legally tenable as he was dismissed from service with effect from 2.3.1985.

10. The learned counsel for the applicant heavily relied upon the decision of the Supreme Court in P.R. Jesuratnam, 1986(2) SCALE 879 in support of his contention that the applicant is entitled to payment of gratuity. The facts and circumstances of the case before the Supreme Court are clearly distinguishable. In that case, the Supreme Court observed that since there was no legal provision empowering the authorities to forfeit the gratuity payable to an employee, an order passed by the Government forfeiting the gratuity payable to the applicant must be held to be bad and must be set aside. In the instant case, Rule 24 of the CCS(Pension) Rules, 1972 envisages forfeiture of past service which would have the effect of forfeiting pension, gratuity and other retirement benefits.

11. Taking an overall view of the matter and in the interest of justice and fairplay, we partly allow the application and

dispose it of with the following orders and directions:-

(i) We hold that the order dated 2.3.1985 passed by the respondents is not legally tenable as it is a bald and non-speaking order. We do not, however, set aside and quash the same. The applicant is given liberty to make a detailed representation to the competent authority in which he may bring out the extenuating circumstances, if any, and his grievance about the quantum of punishment imposed on him. The ^{respondents} should also consider the question of modifying the penalty to one of compulsory retirement or in the alternative to give compensatory allowance to the applicant in terms of Rule 41 of the CCS(Pension) Rules, 1972. The respondents shall pass a speaking order on the representation made by the applicant, if any, within a period of three months after the receipt of such representation. In case the applicant feels aggrieved, he will be at liberty to move appropriate legal forum in accordance with law.

(2) The respondents shall pay to the applicant ^{the} amounts due towards leave encashment for 19 days claimed by him together with 18% interest per annum.

(3) The respondents shall pay interest at the rate of 18% per annum on delayed payment of G.P.F. and ^{12%} subsistence

allowance, as claimed by him.

(4) The amounts mentioned in (2) and (3) above shall be paid to the applicant by crossed cheque through the Superintendent of the jail in which the applicant is lodged, within a period of two months from the date of communication of this order.

There will be no order as to costs.

Dickenson 22/1/82
(D.K. CHAKRAVORTY)

MEMBER (A)

carried
22/1/82
(P.K. KARTHA)
VICE CHAIRMAN (J)

RKS
220192